SUPREME COURT OF THE UNITED STATES.

No. 184.

WILLIAM R. DUTTON, PLAINTIFF IN ERROR,

vs.

JOHN J. PALAIRET, RICHARD T. PALAIRET, AND JOHN G. BOOTY, TRUSTEES.

IN ERROR TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

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1 Among the records and proceedings of the Supreme Court of Pennsylvania, at Philadelphia, in and for the eastern district of January term, 1866, No. 362, it is thus contained.

In the District Court for the city and county of Philadelphia, it is thus contained of record:

D. C., December Term, 1865.

JOHN G. PALAIRET, RICHARD T. PALAIRET, and JOHN G. BOOTY, Trustees, &c., *vs.* WILLIAM R. DUTTON. } No. 527.

Dec. 21, 1865. Sci. fa. sur mort, dated Aug. 7, 1862, (recorded in M. B. A. C. N., No, 34, page 451, assign M. B. A. C. N., No. 52, page 285, &c.) Ex. Dec. 2, 1865, Ret. 1, Mon., Dec., 1865.

"Nihil habet."

Jan. 2, 1866. Plea filed.

Jan. 10, 1866. Jury called, Eo. die. Verdict for plaintiff, $4,430 16-100.

Jan. 13, 1866. Rule for a new trial, Eo. die. Reasons filed.

Feb. 27, 1866. By writing filed, defendant withdraws his motion for a new trial.

Feb. 27, 1866. Jury fee paid, Eo. die. Judgment.

March 3d, 1866, Writ of error brought into office.

Certified from the record, this 6th day of March, A. D. 1868.

[SEAL.] W. H. BENCKERT,
Pro Prothey.

[5 cent U. S. Rev. stamp.]

2 D. C., December Term, 1885.

PALAIRET *vs.* DUTTON. } No. 257.

Defendant pleads "payment with leave, &c."

CHAS. T. BONSALL,
For Def't.

Per J. K. F.

To pro. D. C. January 2d, 1866.

Endorsement: Palairet *vs.* Dutton. D. C. 527. Dec. T., 1885. Plea. Filed Jan'y 2d, 1866. Bonsall.

3 D. C., December Term, 1865.

JOHN G. PALAIRET, RICHARD PALAIRET, and JOHN G. BOOTY, Trustees, assignees of William L. Shaffer, *vs.* WILLIAM R. DUTTON and LISCOMB R. TITUS, Terre Tenant. } No. 527.

And now, Jan. 30, 1866, a special jury being called, comes, to wit: Aug. C. Montgomery, Ed. Cantwell, Geo. W. Parker, Constan-

tine Somers, Alfred Helmbold, Sam'l Spang, Thos. E. Baxter, John Rees, Chas. Sagee, Chas. Kurlbaum, Thos. Lyle, James Merkins, who being duly empannelled, sworn, or affirmed, according to law, do say, verdict for plaintiff, $4,430 16-100.

D. C., D.,'65.

PALAIRET *vs.* DUTTON. } 527.

And now, January 13, 1866, the defendant, by Chas. T. Bonsall, his attorney, moves for a new trial of above cause.

4 Endorsement: Palairet *vs.* Dutton. 527. D., '65. Rule for a new trial. Filed January 13, 1866.

5 CITY AND COUNTY OF PHILADELPHIA, *ss*:

The Commonwealth of Pennsylvania, to the sheriff of Philadelphia county, greeting:

Whereas, in and by a certain indenture, made the seventh day of August, in the year of our Lord one thousand eight hundred and sixty-two, between William R. Dutton, of the city of Philadelphia, accountant, of the one part, and William L. Schaffer, of the same place, banker, of the other part, (recorded in the office for recording deeds, &c., for the city and county of Philadelphia, in mortgage book A. C. H., No. 34, page 458, on the 7th day of August, A. D. 1862,) reciting, that whereas the said William R. Dutton, in and by a certain obligation or writing obligatory, under his hand and seal duly executed, bearing even date therewith, stands bound unto the said William L. Schaffer in the sum of six thousand dollars, lawful money of the United States of America, conditioned for the payment in three years from the date thereof, of the just sum of three thousand dollars in gold coin of the United States aforesaid, of the present standard of weight and fineness, notwithstanding any law which now may or hereafter shall make anything else a tender in payment of debts, together with interest for the same, payable half yearly in gold coin, such as aforesaid, at the rate of six per cent. per annum without any fraud or further delay.

And the said William R. Dutton, as well for and in consideration of the aforesaid principal debt or sum of three thousand dollars, and for the better securing the payment thereof, with its interests, unto the said William L. Schaffer, his executors, administrators, and assigns, in discharge of the said recited obligation, as for and in consideration of the further sum of one dollar unto him in hand well and truly paid by the said William L. Schaffer, the receipt whereof is thereby acknowledged, did grant, bargain, sell, release, and confirm unto the said William L. Schaffer, his heirs and assigns, all that certain lot or piece of ground, with the improvements, situate on the south side of Wallace street, at the distance of three hundred and forty-one feet eight

inches westward from the west side of Nineteenth street, in the Fifteenth ward of the city of Philadelphia, containing in front or breadth on said Wallace street eighteen feet, and extending in length or depth southward of that width between parallel lines, at right angles with said Wallace street one hundred feet eight and one-half inches, to the middle line of a certain four feet wide alley, laid out for the use of this and the other properties bounding thereon, bounded southwardly by ground now or late of Cyrus Cadwallader; northwardly by said Wallace street; eastwardly and westwardly by other ground of the said William R. Dutton, being part of a larger lot or piece of ground which William L. Schaffer, by indenture, dated the seventh day of August, A. D. 1862, and recorded in the office for recording deeds, &c., at Philadelphia, in deed book A. C. H., No. 55, page 540, &c., granted and conveyed unto the said William R. Dutton, in fee, together with the use of the said alley, and together with the appurtenances. To have and to hold the same unto the said William L. Schaffer, his heirs and assigns, to and for his and their only proper use and behoof forever. And in and by the said indenture it was provided always nevertheless, that if the said William R. Dutton, his heirs, executors, administrators or assigns, should and did well and truly pay, or cause to be paid unto the said William L. Schaffer, his executors, administrators or assigns, the aforesaid debt or sum of three thousand dollars in gold coin, as aforesaid, on the day and time therein being mentioned and appointed for payment thereof, together with the lawful interest thereof, in such gold coin as aforesaid, without any fraud or further delay, and without any deduction, defalcation, or abatement to be made of anything for or in respect of any taxes, charges or assessments whatsoever, then and from thenceforth, as well the said indenture and the estate thereby granted, as the said recited obligation should cease, determine and become void, anything therein contained to the contrary in anywise notwithstanding.

And whereas the said William L. Schaffer, by a certain indenture or instrument of assignment, dated the 28th day of March, 1863, recorded in mortgage book A. C. H. No. 52, page 285, &c., assigned and transferred the said indenture of the mortgage above recited, with the premises therein described, and the obligation thereby secured unto John G. Palairit, Richard T. Palairit, and John G. Booty, trustees, &c.

And whereas the said sum of three thousand dollars in gold coin as aforesaid, with the interest thereof in like gold coin, as yet remains unpaid, as we have been given to understand, and the said John G. Palairit, Richard T. Palairit, and John G. Booty, trustees, &c., praying that a fit remedy in this behalf may be provided we command you that by good and lawful men of your bailiwick, you make known to the said William R. Dutton that he be and appear before our judges at Philadelphia, at our District Court for the city and county of Philadelphia, there to be held the first Monday of December inst. next, to show if anything he knows or has to say why the said mortgaged premises, with the appurtenances, ought not to be

taken in execution and sold, to satisfy the debt and interest aforesaid if to him it shall seem expedient. And have you then there the names of those by whom you shall so make it known to him and this writ.

Witness the Honorable George Sharswood, Doctor of Laws, president of our said court at Philadelphia, the 2d day of December, in the year of our Lord one thousand eight hundred and sixty-five.

[SEAL.] F. A. FREGOT, *Prothonotary.*

Endorsed: 527, Dec. 1, 1865. John G. Palairet, Richard T. Palairet, and John G. Booty, trustees, &c. *vs.* William R. Dutton. Scifasur mortgage. Rowle. Nihil Habet so answers. Henry J. McIntire, dep. shff. Henry C. Howel, shff. Service accepted for Liscomb R. Titus, terre tenant. Chas. V. Bonsall.

6 EASTERN DISTRICT OF PENNSYLVANIA, *sct*:

The Commonwealth of Pennsylvania, to the justices of the District Court for the city and county of Philadelphia, greeting:

Because in the record and process, and in rendering the judgment in a certain plaint, which was in our said court, before the judges of the same court, by our writ, between William R. Dutton, plaintiff in error, and John G. Palairit, Richard T. Palairit, and John G. Booty, trustees, &c., defendant in error, as it is said manifest error hath intervened, to the great damage of the said plaintiff in error, as by complaint of the same plaintiff in error we have received information, we, willing that if any error be therein, it should be corrected, and that speedy justice be done to the parties in this part, do command you that if judgment, as it is said, be rendered in the said plea, then the record and process, and all things touching the same, under your seals, distinctly and openly, you have before the justices of our Supreme Court of Pennsylvania, at a Supreme Court to be held at Philadelphia, in and for the Eastern District of said Commonwealth, on the first Monday of January next, and this writ, that the record and process aforesaid being inspected, we may further cause to be done what of right and according to our laws and customs ought.

Witness the Hon. George W. Woodward, Doctor of Laws, Chief Justice of our said Supreme Court, at Philadelphia, the second day of March, in the year of our Lord one thousand eight hundred and sixty-six, and of the Commonwealth the ninetieth.

[SEAL.] JAMES ROSS SNOWDEN, *Prothonotary.*

7 To the honorable the judges within named:

The pleas within mentioned, and all things touching the same we certify and send, together with this writ.

[SEAL.] GEO. SHARSWOOD.
[SEAL.] GEO. M. STROUD.

Endorsed: No. 362, January term, 1866. Supreme Court. William R. Dutton, plaintiff in error *vs.* John G. Palairit *et al.*, trustees,

&c., defendants in error. Writ of error to the District Court for the city and county of Philadelphia. Returnable the first Monday of January, 1867. Rule on the defendant in error to appear and plead on the return day of the writ. I certify that D. 65, 527, are bail in error in the above case, in the sum of . Brought into office Mch. 3, 1866. Record returned Dec. 6, 1866. Bonsall.

8 Opinion of the Court by Woodward, chief justice, delivered at Harrisburg, May 13, 1867.

Error to D. C., Philad'a.

DUTTON
vs.
PALAIRET AND OTHERS.

The argument of the learned counsel for defendant in error that the only debt in this case to which the acts of Congress making treasury notes legal tenders can be applied is in the penalty of the bond recited in the mortgage, is too artificial for practical use. Bonds and mortgages are usually taken as these were, in a penal sum; that is, double the real debt, and what proves the greater sum to be a mere penalty is that it is always discharged by paying the real debt. No matter that this result is accomplished by the interposition of equity to relieve against a forfeiture at law, the effect is to make the condition of the bond and mortgage, rather than the penal sum, the debt between the parties, and as the acts of Congress apply themselves to all private debts, such conditions of penal instruments are subject to the acts if not taken out of them by special provisions.

Still, it is worthy of notice, as matter of construction, that the penal sum filed between these parties was payable in "lawful money of the United States," while the real debt was payable in gold coin of the United States, of a particular weight and fineness,
9 which might be or might not be lawful money. According to the terms of the contract, the penalty, if it became payable at all, could be paid in anything which the law making power of the country had declared, or should thereafter declare, to be lawful money, a legal tender; but the principal debt was to be payable only specific coins whatever legislation might take place. Herein the parties strikingly contrasted the different measures of value they meant should be applied to the penalty and to the real debt.

But notwithstanding the terms of their contract, it is argued that this is a specie contract like that in Graham *vs.* Marshall, and like the debt in that case payable in greenbacks. It is to be observed that the word "specie," in the corner of note in question, in Graham *vs.* Marshall, was the only word that tended to distinguish that from ordinary contracts for lawful money, and that word was explained by parol proof of bankers to mean gold or silver currency of the United States, which was the oly legal tender at the date of the contract. The doctrine of that case is then, that a contract which

stipulated for gold and silver currency of the United States before the act of Congress making paper money a legal tender, was nevertheless payable in paper money after the act was passed. The legislative power of Congress, assuming it to have a constitutional foundation was held sufficient to substitute one form of current
10 money for another form of current money in payment of a private debt. It is not my purpose at present to enter into any vindication of that doctrine, though I know it has been extensively doubted; but I may be allowed io say, in passing, that it seems to be forgotten that every contract which existed in the United States for the payment of money on the 26th February, 1862, was a "specie" contract, that is, solvable in nothing but gold or silver currency of the United States, (except by consent of the creditor,) because nothing else was a legal tender in payment of debts at that date. The contract in Graham *vs.* Marshall only expressed what was the common law of all other money contracts. If the act of Congress were not applicable to it by parity of reason, it would be applicable to no other money contracts. In other words it was a dead letter in respect of all existing contracts, though the constitutional power to enact it was successfully asserted. Whoever therefore quarrels with the application of the act to that particular contract, is bound to deny its applicability to all contracts existing at its date for the payment of lawful money, and that would bring the objector to the very ground on which my br., Thompson, and myself struggled unsuccessfully to resist the operation of the act. We denied the
11 power of Congress to change existing contracts, however they might prescribe a rule for future ones, but the power having been sustained, it cannot distinguish between contracts that are all made on the same specie basis, or say some shall be payable only in specie, and others may be paid in greenbacks. If the power is constitutional the act applies it to all private debts. But here we have a contract that was made after the act of '62 was passed, and the stipulation was for "three thousand dollars in gold coin of the United States aforesaid, of the present standard weight ahd fineness, notwithstanding any law which now, may, or hereafter shall make anything else a tender in payment of debt." If the contract had stopped at the word "dollars," the legal currency of the country would have been intended, and any kind of dollars which the sovereign power had declared a legal tender would have sufficed to pay the debt, but the parties did not stop there, but went on to prescribe the dollar for themselves. They said it should be gold, coined by the United States, and should consist of as many pennyweights and grains as the present standard of the government requires, whatever changes of standard the government might thereafter make. It was a contract for gold coins to be measured by a fixed, certain, and well known standard, which was expressly distinguished from any other standard the government might set up. Currency or
12 current money, or lawful money, were not once mentioned or alluded to in the efficient part of the contract. How then can we treat this as a specie contract payable in the current money of

the government. The gold coins might or might not be current money. The contract did not base itself on that, but on coins of a specific value. Like the contract in Mather *vs.* Kinnikie, 1 Smith, 425, which was coined silver; this was a contract not for governmental currency but for a specific article, as specific as if it had been for wheat at so many pounds per bushel, or for a horse of certain qualities.

The reference to the governmental standard was only a convenient mode of fixing the agreed fineness of the coins. And the [the] selection of American coins, instead of Spanish, as in Mather *vs.* Kinnikie, is a circumstance of no importance. The contracts in both cases were essentially the same, and both are plainly distinguishable from the contract in Graham *vs.* Marshall. There the ordinary legal fenders of the country were stipulated for; here they were expressly excluded, unless they should happen to correspond with the standard adopted by the parties as a law unto themselves. The possibility of such an accidental correspondence cannot control the construction of the contract, for contracts that are lawful must be administered as the parties have made them. Modus et conventio vincunt legem.

13 But it is argued that the contract in this case was in derogation of the policy of Congress. Undoubtedly it was; but what of it? Congress has not denied to parties the capacity to contract for specific articles. All barters are not abolished by law. When parties contract expressly or impliedly for lawful money, they mean such money as the government makes lawful for the time being. Here the policy of Congress has scope and verge enough, for it can substitute a depreciated paper currency for gold and silver. But when parties stipulate for specific chattels, and expressly exclude the legal tender which the government has prescribed, the bargain must be presumed to rest upon an adequate consideration, and neither legislative nor judicial power can pluck the fruits that belong to one of the parties for the mere purpose of giving them to the other.

The judgment is affirmed.

14 In the Supreme Court of Pennsylvania, of January term, 1866.

Extract from appearance docket.

WILLIAM R. DUTTON, plaintiff in error, *vs.* JOHN G. PALAIRET, RICHARD T. Palairet, and John G. Booty, trustees, &c., defendants in error.	No. 362.

Writ of error to the District Court for the city and county of Philadelphia, ret'ble the first Monday of January, 1867. Exit March 2d, 1866. Eo die affidavit taken.

(D. 65. No. 527.)

Dec. 6, 1866.—Record returned.
Dec. 15, 1866.—Bill of exceptions filed.
Feb. 15, 1867.—Argued.
May 13, 1867.—Judgment affirmed. Opinion by Woodward, C. J., delivered at Harrisburg. (Dissenting opinion by Read, justice, filed. Agnew, justice, was not present at this argument.)

15 *Bill of exceptions.*

Be it remembered, that in the term of December, 1865, and No. 527, came John G. Palairet, Richard T. Palairet, and John G. Booty, trustees, into the District Court for the city and county of Philadelphia, and impleaded William R. Dutton in a certain plea of scire facias sur mortgage, &c., in which the said defendants pleaded, (pro ut pleas.) And thereupon issue was joined between them.

And afterwards, to wit, at a session of said court, held at the city aforesaid, before the Hon. J. Clark Hare, associate justice of the said court, on the 10th day of January, A. D. 1866, the aforesaid issue between the said parties came to be tried by a jury of the said county, for that purpose duly impanneled, (pro ut list of jurors,) at which day came as well the said plaintiff as the said defendant, by their respective attorneys; and the jurors of the jury aforesaid impanneled to try the said issues, being also called, came, and were then and there in due manner chosen and sworn, or affirmed, to try the said issue; and upon the trial the counsel of the said plaintiffs read in evidence a mortgage of William R. Dutton to William L. Shaffer, dated August 7, 1862, and recorded on that day, in Mortgage Book A. C. H., No. 34, page 458, (pro ut the same.)

And here the counsel for the plaintiffs read in evidence an assignment on the mortgage aforesaid, and bearing date March 28, 1863, and recorded in Mortgage Book A. C. H., No. 52 and page 285, said assignment being to John G. Palairet, Richard T. Palairet, and John G. Booty, (pro ut the same.)

And here the counsel for the plaintiffs read in evidence the bond accompanying said mortgage, and the assignment thereof to plaintiffs, (pro ut the same.)

And here it is admitted that the highest rate of gold for which gold sold on the 7th day of August, 1865, was $1 44.

And here plaintiff closed.

16 And here the counsel for the plaintiff requested the judge to charge—

1. That the plaintiffs are entitled to recover the amount of principal and interest of the mortgage in this case in lawful money of the United States, to be calculated according to the market rate of premium for gold at the time of the breach of the contract—that is to say, at the rate of one hundred and forty-four dollars, in lawful money, for every one hundred dollars in gold.

And here the counsel for the defendants requested the judge to charge:

1. That plaintiff is entitled to a verdict for the amount of the mortgage, with the interest due thereon, without regard to the value of gold coin at the time the mortgage became due.

2. That plaintiff is entitled to a verdict for the amount of the mortgage, and interest, without regard to the currency in which the same is made payable.

3. That plaintiff is entitled to a verdict for the amount of the debt and interest, in dollars of the United States, without regard to the designation of coinage or kind.

And the learned judge affirmed the point submitted by the plaintiffs.

To which the defendant excepted, and the learned judge here sealed a bill of exceptions.

[SEAL.]

And the learned judge declined to charge as requested by the defendants.

To which defendants excepted, and the learned judge here sealed a bill of exceptions.

[SEAL.]

17 And thereupon the counsel for the said defendants did then and there except to the aforesaid charge and opinion of the said court, and, inasmuch as the said charge and opinion so excepted to do not appear upon the record, the said counsel for the said defendants did then and there tender this bill of exceptions to the opinion of the said court, and requested the seal of the judge aforesaid should be put to the same, according to the form of the statute in such case made and provided. And thereupon the aforesaid judge, at the request of the said counsel for the defendant, did put his seal to this bill of exceptions, pursuant to the aforesaid statute in such case made and provided, this 13th day of January, A. D. 1866.

J. CLARK HARE.

[L. S.]

[L. S.]

18 *Mortgage.*

This indenture, made the seventh day of August, in the year of our Lord one thousand eight hundred and sixty-two, between William R. Dutton, of the city of Philadelphia, accountant, of the one part, and William L. Schaffer, of the same place, banker, of the other part:

Whereas the said William R. Dutton, in and by a certain obligation or writing obligatory under his hand and seal duly executed, bearing even date herewith, being No. 1,983 of this date, stands firmly bound unto the said William L. Schaffer in the sum of six thousand dollars, lawful money of the United States of America, conditioned for the payment in three years from the date thereof of the just sum of three thousand dollars, in gold coin of the United States

aforesaid, of the present standard of weight and fineness, notwithstanding any law which now may, or hereafter shall, make anything else a tender in payment of debts, together with interest for the same, payable half yearly in gold coin, such as aforesaid, at the rate of six per cent. per annum, without any fraud or further delay; provided, however, and it is thereby expressly agreed, that if at any time default shall be made in the payment of interest on said principal sum for the space of thirty days after any half yearly payment thereof shall fall due, then, and in such case, the whole principal debt aforesaid shall, at the option of the said William L. Schaffer, his executors, administrators, or assigns, become forthwith due and payable immediately, and payment of said principal sum and all interest thereon may be enforced and recovered at once, anything therein contained to the contrary thereof notwithstanding, as in and by the said above-recited obligation and the condition thereof, relation being thereunto had may more fully and at large appear:

Now this indenture witnesseth, that the said William Dutton, as well for and in consideration of the aforesaid debt or principal sum of three thousand dollars, and for the better securing the payment of the same, with interest in manner aforesaid, unto the said William L. Schaffer, his executors, administrators, and assigns, in discharge of the said above-recited obligation, as for and in consideration of the further sum of one dollar unto him in hand well and truly paid by the said William L. Schaffer at and before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, enfeoffed, released, and confirmed, and by these presents doth grant, bargain, sell, alien, enfeoff, release, and confirm unto the said William L. Schaffer, his heirs and assigns, all that certain lot or piece of ground, with the improvements, situate on the south side of Wallace street, at the distance of three hundred and forty-one feet eight inches westward from the west side of Nineteenth street, in the Fifteenth Ward of the city of Philadelphia, containing in front or breadth, on said Wallace street, eighteen feet inches, and extending in length or depth southward of that width between parallel lines, at right angles with said Wallace street, one hundred feet eight and one-half inches, to the middle line of a certain four-feet wide alley, laid out for the use of this and the other properties bounding thereon, bounded southwardly by ground now or late of Cyrus Cadwallader; northwardly by said Wallace street; eastwardly and westwardly by by other ground of the said William R. Dutton, (being part of a large lot or piece of ground which William L. Schaffer, by indenture dated the seventh day of August, A. D. 1862, and recorded in the office for recording deeds, &c., at Philadelphia, in deed book A. C. H., No. 55, page 540, &c., granted and conveyed unto the said William R. Dutton in fee,) together with the free and common use, right, liberty, and privilege of the said four feet wide alley as and for a passage way and water-course, &c., at all
19 times and forever, and together with all and singular the improvements, ways, waters, water-courses, rights, liberties, privileges, improvements, hereditaments, and appurtenances what-

soever thereunto belonging or in anywise appertaining, and the reversions and remainders, rents, issues, and profits thereof: To have and to hold the said lot or piece of ground, with the improvements, hereditaments, and premises hereby granted or mentioned, or intended so to be, with the appurtenances, unto the said William L. Schaffer, his heirs and assigns, to and for the only proper use and behoof of the said William L. Schaffer, his heirs and assigns forever, provided always, nevertheless, that if the said William R. Dutton, his heirs, executors, administrators, or assigns, do and shall well and truly pay, or cause to be paid, unto the said William L. Schaffer, his executors, administrators, or assigns, the aforesaid debt or principal sum of three thousand dollars in gold coin, such as aforesaid, on the day and time hereinbefore mentioned and appointed for payment of the same, together with interest according to the condition of the above-recited obligation, without any fraud or further delay, and without any deduction, defalcation, or abatement to be made of anything for or in respect of any taxes, charges, or assessments whatsoever, that then, and from thenceforth, as well this present indenture, and the estate hereby granted, as the said above-recited obligation, shall cease, determine, and become void, anything hereinbefore contained to the contrary thereof in anywise notwithstanding; provided further, in case of default in the payment either of the said principal debt or sum, or of the interest thereon, for the space of thirty days as aforesaid, or any part thereof, that thereupon it shall be lawful for the said William L. Schaffer, or his executors, administrators, or assigns, to sue forthwith a writ or writs of scire facias upon this present indenture, and to proceed at once thereon to judgement, execution, and sale of the premises hereby conveyed in mortgage, for the recovery of the said said principal debt hereby secured, and all interest due thereon according to law, without further stay, any law, usage, or custom to the contrary notwithstanding.

In witness whereof, the said parties to these presents have hereunto interchangably set their hands and seals. Dated the day and year first above written.

[SEAL.] WILLIAM R. DUTTON.

Sealed and delivered in the presence of us—

GEO. J. FRENCH.

PETER HAY.

On the seventh day of August, Anno Domini 1862, before me, an alderman in and for the city of Philadelphia, personally appeared the above-named William R. Dutton, and in due form of law acknowledged the above indenture of mortgage to be his act and deed, and desired the same might be recorded as such.

Witness my hand and seal the day and year aforesaid.

[L. S.] PETER HAY, *Alderman.*

Recorded in the office for recording deeds, &c., for the city and county of Philadelphia, in mortgage book A. C. H., No. 34, page 458, &c.

Witness my hand and seal of office this seventh day of August, A. D. 1862. [SEAL.] ALFRED C. HARMER, *Rec'd'r.*

20 *Bond.*

Know all men by these presents that I, William R. Dutton, of the city of Philadelphia, accountant, am held and firmly bound unto William L. Schaffer, of the same place, banker, in the sum of six thousand dollars, lawful money of the United States of America, to be paid to the said William L. Schaffer, his certain attorney, executors, administrators, or assigns, to which payment, well and truly to be made, I do bind and oblige myself, my heirs, executors, and administrators, and every one of them, firmly by these presents, being No. 1,938 of this date.

Sealed with my seal, dated the seventh day of August, in the year of our Lord one thousand eight hundred and sixty-two.

The condition of this obligation is such, that if the above bounden William R. Dutton, his heirs, executors, administrators, or any of them, shall and do well and truly pay, or cause to be paid, unto the above-named William L. Schaffer, his certain attorney, executors, administrators, or assigns, in three years from the date hereof, the just sum of three thousand dollars, in gold coin, of the United States aforesaid, of the present standard of weight and fineness, notwithstanding any law which now may, or hereafter shall make anything else a tender in the payment of debts, together with interest for the same, payable half yearly in gold coin, such as aforesaid, at the rate of six per cent. per annum: provided, however, that if at any time default shall be made in the payment of interest on the said principal sum for the space of thirty days after any payment thereof shall fall due, then and in such case the whole principal debt aforesaid shall, at the option of the said William L. Schaffer, his executors, administrators, or assigns, become forthwith due and recoverable at law, anything herein contained to the contrary thereof notwithstanding, without any fraud or further delay, then the above obligation to be void; or else to be and remain in full force and virtue.

[SEAL.] WILLIAM R. DUTTON.

Sealed and delivered in the presence of—
GEO. J. FRENCH.
PETER HAY.

21 *Endorsement.*

For value received I do hereby assign, transfer, and set over the within bond or obligation, and warrant of attorney thereto annexed, and all the principal monies therein mentioned, together with the interest accrued and hereafter to accrue thereon, and all my estate, riight, title, and interest of, in, and to the same, unto and to the only proper use and behoof of John G. Palairet, Richard T. Palairet, and John G. Booty, continuing trustees under the marriage settlement of Mary Ann Hamilton, afterwards Mary Ann Palairet, their executors, administrators, and assigns forever.

Witness my hand and seal this twenty-eighth day of March, Anno Domini one thousand eight hundred and sixty-three, (1868.)

[SEAL.] W. L. SCHAFFER.

Sealed and delivered in the presence of—
J. REEVES.
JOHN WHITE.

22 To HENRY WHARTON, Esq., attorney of the Court of Common Pleas, at Philadelphia, in the county of Philadelphia, in the State of Pennsylvania, or to any other attorney of the said court, or of any other court, there or elsewhere.

Whereas I, William R. Dutton, of the city of Philadelphia, accountant, in and by a certain obligation bearing even date herewith, (being No. 1,938 of that date,) do stand bound unto William L. Schaffer, of the same place, banker, in the sum of six thousand dollars, lawful money of the United States of America, conditioned for the payment, in three years from the date thereof, of the just sum of three thousand dollars, in gold coin of the United States of America, of the present standard of weight and fineness, notwithstanding any law which now may, or hereafter shall make anything else a tender in the payment of debts, together with interest for the same, payable half yearly in gold coin, such as aforesaid, at the rate of six per cent. per annum: provided, however, that if at any time default shall be made in the payment of interest on the said principal sum for the space of thirty days after any half yearly payment thereof shall fall due, then and in such case the whole principal debt aforesaid shall, at the option of the said William L. Schaffer, his executors, administrators, or assigns, become forthwith due and recoverable at law, anything therein contained to the contrary thereof notwithstanding:

These are to desire and authorize you, or any of you, to appear for me, my heirs, executors, or administrators, in the said court or elsewhere, in any action of debt, there or elsewhere brought, or to be brought against me, my heirs, executors, or administrators, at the suit of the said William L. Schaffer, his executors, administrators, or assigns, on the said obligation, as of any term or time past, present, or any other subsequent term or time there or elsewhere to be held, and confess judgment thereupon against me, my heirs, executors, or administrators, for the sum of six thousand dollars, lawful money of the United States of America, debt, besides costs of suit, by non sum informatus, nihil decit, or otherwise, as to you shall seem meet; and for your, or any of your so doing, this shall be your sufficient warrant. And I do hereby for myself, my heirs, executors, and administrators, remise, release, and forever quitclaim unto the said William L. Schaffer, his certain attorney, executors, administrators, and assigns, all and all manner of error and errors, misprisions, misentries, defects, and imperfections whatever in the entering of the said judgment, or any process or proceedings thereon or thereto, or anywise touching or concerning the same.

In witness whereof, I have hereunto set my hand and seal the seventh day of August, in the year of our Lord one thousand eight hundred and sixty-two.

[SEAL.] WILLIAM R. DUTTON.

Sealed and delivered in the presence of—
GEO. J. FRENCH.
PETER HAY.

23 *Assignment.*

This indenture, made this twenty-eighth day of March, in the year of our Lord one thousand eight hundred and sixty-three, between William L. Schaffer, of the city of Philadelphia, gentleman of the first part, Cyrus Cadwallader, of the said city, conveyancer, of the second part, and John G. Palairet, Richard T. Palairet, and John G. Booty, continuing trustees under a cetain indenture or deed of marriage settlement bearing date the thirteen and fifteenth days of April, Anno Domini one thousand eight hundred and forty-three, recorded in deed book R. L. L. No. 15, page 53, &c., acting by their attorney, in fact William Henry Rawle, duly constituted and appointed by letter of attorney bearing date the twentieth day of March, Anno Domini one thousand eight hundred and sixty-two, recorded in letter of attorney, book A. C. H., No. 1, page 344, at Philadelphia, of the third part. Whereas, George Cadwalader and wife, by indenture bearing date the eighteenth day of May, Anno Domini 1854, recorded in deed book T. H., No. 143, page 428, &c., granted and conveyed unto Ellwood R. Norney, his heirs and assigns, a certain large lot or piece of ground situate on the southwest corner of Broad street and Oxford street, in the twentieth ward of the city of Philadelphia aforesaid, containing in front or breadth on the said Broad street one hundred feet, and extending in length or depth, westwardly of the width, two hundred feet, to Carlisle street, reserving thereout the yearly ground rent or sum of six hundred and twenty dollars,
24 as therein mentioned, and also containing a provision and covenant for the extinguishment of the said ground rent upon the payment of ten thousand and three hundred and thirty-three dollars and thirty-four cents, and by deed poll dated the fourth day of February, Anno Domini 1860, and entered among the records of the District Court, in sheriffs' deed book X, No. 2, page 188, &c., William H. Kern, esquire, high sheriff, &c., granted and conveyed the said above described lot of ground to the said Cyrus Cadwalader in fee, under and subject, nevertheless, to the payment of the said yearly ground rent of six hundred and twenty dollars. And whereas, the said George Cadwalader and wife, by indenture dated the twenty-fifth day of February, Anno Domini 1862, recorded in deed book A. C. H., No. 42, page 11, &c., granted and assigned inter alia the aforesaid yearly ground rent of six hundred and twenty dollars unto John G. Palairet, Richard T. Palairet, and John G. Booty, trustees, as aforesaid. And whereas, the said John G. Palairet, Richard T. Palairet, and John G. Booty, trustees, as aforesaid, acting by their said attor-

ney in fact, William Henry Rawle, by indenture bearing even date herewith, and intended to be forthwith recorded, and in consideration of the sum of ten thousand three hundred and thirty-three dollars and thirty-four cents, being the extinguishment money of the said ground rent, did grant, release, and extinguish unto the said Cyrus Cadwallader, he then being the owner of the said lot of ground whereout the said ground rent was issuing, and payable the said above mentioned ground rent of six hundred and twenty dollars. And whereas, the said John G. Palairet, Richard E. Palairet, and John G. Booty, trustees, as aforesaid, at the request of the said Cyrus Cadwallader, have agreed to invest, apply, and appropriate the said sum of ten thousand three hundred and thirty-three dollars and thirty-
25 four cents, the extinguishment money aforesaid, together with an additional sum of one thousand and sixty-six dollars and sixty-six cents, part of the trust funds of the said estate in their hands, in the purchase of four several mortgages of three thousand dollars each, hereinafter more particularly mentioned and described. Now this indenture witnesseth that the said William L. Schaffer, the the mortgagee named in the said four indentures of mortgage, having this day assigned and transferred the obligations in the said four indentures of mortgage recited, and all monies, both principal and interest, therein due and payable or hereafter to grow due and payable, with the warrants of attorney to the said obligations annexed, and other the appurtenances, unto the said John G. Palairet, Richard T. Palairet, and John G. Booty, trustees, as aforesaid, now in consideration thereof, and of the sum of twelve thousand dollars, lawful money, unto him well and truly paid by the said John G. Palairet, Richard T. Palairet, and John G. Booty at the time of the execution hereof, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, assigned, transferred, and set over, and by these presents doth grant, bargain, sell, assign, transfer, and set over unto the said John G. Palairet, Richard T. Palairet, and John G. Booty, their heirs, executors, administrators, and assigns, all those four certain indentures of mortgage of three thousand dollars, each given and executed by William R. Dutton, dated respectively the seventh day of August, Anno Domini 1862; one of them upon the premises situate on the south side of Wallace street, at the distance of two hundred and eighty-seven feet eight inches westward from the west side of Nineteenth street, in the fifteenth ward of the city of Philadelphia aforesaid, said indenture of mortgage being recorded in mortgage book A. C. H., No. 34, page 448, &c.; another of them upon the premises situate on the south side of the said Wallace street, at the distance of three hundred and five feet eight inches westward from the west side of the said Nineteenth street, said inden-
26 ture being recorded in mortgage book A. C. H., No. 34, page 451, &c.; another of them on premises situate on the south side of the said Wallace street, at the distance of three hundred and twenty-three feet eight inches westward from the west side of the said Nineteenth street, said indenture being recorded in mortgage book A. C. H, No. 34, page 455, &c.; and the other of them on

premises on the south side of the said Wallace street, at the distance of three hundred and forty-one feet eight inches westward from the west side of the said Nineteenth street, said indenture being recorded in mortgage book A. C. H., No. 34, page 458, &c.; also the hereditaments and premises in and by the said indentures of mortgage particularly described and granted with the appurtenances. And also all the estate, right, title, interest, property, claim, and demand whatsoever of him, the said William L. Schaffer, either at law or in equity, of, in, and to the same. To hold said four mortgages to and upon the several uses and trusts as set forth in the said deed of marriage settlement, and with the same and like powers and authorities, so far as the same are now existing and capable of taking effect, subject, nevertheless, to the equity of redemption of the said mortgagor above-named, his heirs, executors, administrators, and assigns therein.

In witness whereof the said parties hereunto have interchangeably set their hands and seals dated the day and year first above written.

[SEAL.] W. L. SCHAFFER,
[SEAL.] CYRUS CADWALLADER,

Sealed and delivered in the presence of us—
J. REEVES,
JOHN WHITE.

[$5 revenue stamp.]
[$1 00 stamp.]

27 On the twenty-eighth day of March, A. D. 1863, before me, the subscriber, an alderman of the city of Philadelphia, came the above named William L. Schaffer and Cyrus Cadwallader, and acknowledged the above and foregoing indenture to be their and each of their act and deed, and desired the same might be recorded as such.

Witness my hand and seal the day and year aforesaid.

[SEAL.] JOHN WHITE, *Alderman.*

Recorded in the office for recording deeds, &c., for the city and county of Philadelphia, in mortgage book A. C. H., No. 52, page 285.

Witness my hand and seal of office this twenty-eighth day of March, A. D. 1863.

[SEAL.] ALFRED C. HARMER, *Recorder.*

28 UNITED STATES, *Eastern District of Pennsylvania, ss:*

The President of the United States to the judges of the Supreme Court of Pennsylvania in and for the eastern district of Pennsylvania, greeting:

Because that in the record and process, and also in the rendering of judgment in a suit before you, between William R. Dutton, plaintiff in error, and John G. Palairet, Richard T. Palairet, and John G. Booty, trustees, defendants in error, in a plea of scire facias sur mortgage, a manifest error has intervened to the great damage of

the said William R. Dutton, as in his complaint has been stated, and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded that if judgment thereof be given, then, under your seal, you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them and this writ, so that you have the same before the judges of the Supreme Court of the United States, to be holden at the city of Washington, in the District of Columbia, on the first Monday of December next, that the record and process aforesaid being inspected, they may cause to be done thereupon, what of right ought to be done.

Witness the Honourable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at Philadelphia, this twenty-fourth day of May, A. D. one thousand eight hundred and sixty-seven, and in the ninety-first year of the independence of the said United States.

[SEAL.] W. GRIER HIBLER,
Pro Clerk Circ't C't U. S., E. D. of Penna.

SUPREME COURT, *Jan'y*, 1866. 362.

In obedience to the within writ the record and proceeding in the within mentioned case, being an exemplication thereof, as fully as the same remain on record in the office of the Supreme Court the eastern district, are herewith returned.

JAMES THOMPSON,
Justice Sup. Court of Penna., Acting C. J. in the absence of Woodward, C. J., in Europe.

Attest:

JAMES ROSS SNOWDEN,
Prothonotary.

Endorsed: Supreme Court of the United States. William R. Dutton, plaintiff in error, *vs.* Jno. G. Palairet *et al*, defendants in error. Writ of error. David W. Sellers, 430 Walnut, Phila.

29 I, James Ross Snowden, prothonotary of the Supreme Court of Pennsylvania, do certify the above and foregoing to be a true and accurate copy of the record and proceedings in the above-stated case.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Supreme Court, at Philadelphia, in and for the eastern district of Pennsylvania, this 24th day of June, A. D. 1867.

[SEAL.] JAMES ROSS SNOWDEN,
Prothonotary.

